

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: Mark A. FELKEY et al.	Confirmation No.: 9669
Application No.: 10/051,180	Group Art Unit: 2154
Filed: January 22, 2002	Examiner: Martin, N.
Customer No.: 25537	
Attorney Docket: WMA01004	
Client Docket: 09710_1124	

For: METHOD AND SYSTEM FOR PROVIDING SOFTWARE INTEGRATION FOR A
TELECOMMUNICATIONS SERVICES ON-LINE PROCUREMENT SYSTEM

REPLY BRIEF

Honorable Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is submitted in response to the Examiner's Answer mailed March 25, 2008.

I. STATUS OF THE CLAIMS

Claims 1-40 are pending and are on appeal. Claims 1-40 remain rejected under 35 U.S.C. §103 as obvious based on *Crawford* (US 6,014,651) in view of *Elsbree* (US 6,834,388).

II. GROUNDS OF REJECTION TO BE REVIEWED

Whether claims 1-40 are obvious under 35 U.S.C. §103 based on *Crawford* (US 6,014,651) in view of *Elsbree* (US 6,834,388).

III. ARGUMENT

Appellants maintain and incorporate the positions presented in the Appeal Brief filed December 13, 2007, but presents further refutation of certain assertions presented in the Examiner's Answer.

In the Appeal Brief of December 13, 2007, Appellants maintained, and continue to maintain, that *Crawford* fails to disclose a “web tier,” as recited in claim 1. The Examiner argues, at pages 11-12 of the Answer, that paragraph [47] of the instant application discloses that a web tier, or first layer, is responsible for receiving a request or a user action and delivering web contents to the client machines. The Examiner then points to col. 4, lines 47-55 of *Crawford* for a showing that the reference provides for a general discussion of a LAN wherein a user's computer sends a request for a document over the LAN, a file server receives the request, processes the request, and sends the requested document over the network to the user's computer. The Examiner then concludes that since *Crawford* discloses a function of receiving a request or user action and delivering web contents to client machines, it discloses the claimed “web tier.”

With all due respect, the Examiner's logic is flawed. The mere fact that two elements may perform one common function does not, necessarily, make the two elements equivalent. *Crawford*'s mere disclosure of a function of receiving a request, processing that request, and sending a requested document does not, *per se*, disclose a “web tier,” as claimed. In accordance with Appellants' disclosure, at paragraph [45], the “web tier” “is responsible for delivering web content 512...to the client machines...” *Crawford*'s replica computer 160, which the Examiner identifies as the claimed “web tier,” does not deliver any web content to client machines. The

Examiner cites col. 17, line 6-col. 18, line 5 of the reference, but a review of this portion of the reference finds disclosure of the replica computer operating in an on-line or off-line mode, being connected to customer computers via a modem, being connected, or attached, to the host computer, and being used “to facilitate customer access to host computer virtual disks.” However, the replica computer of *Crawford* provides no capability to deliver any web content to the client machines; and, therefore, there can be no disclosure in *Crawford* of any “web tier,” as claimed.

The Examiner argues, at page 12 of the Answer, that *Crawford* discloses the claimed “application tier” coupled to the web tier and configured to perform order management, online ordering or user management functions because *Crawford* discloses a replica computer, indicative of a web tier, connected to a host computer, indicative of an application tier, with the host computer performing various functions upon request. The Examiner contends that such functions, as logging information for billing and security purposes, keeping track of beginning and ending times of access, and allocating appropriate virtual disks containing the software needed to satisfy the purchase request, meet the claim language “configured to perform order management, online ordering or user management functions.”

Since there is no “web tier” in *Crawford*, for the reasons above, it follows that there can be no “application tier coupled to the web tier,” as claimed. Further, whereas the application tier of the claims is configured to “perform order management, online ordering, or user management functions,” the host computer of *Crawford* merely accesses virtual disk drives to provide services to a customer. Rather than “online ordering,” as specified in the claims, the “online purchase” of *Crawford* relates to an online service customer signup process (see box 400 in Fig. 8A, and col. 28, lines 28 *et seq.*).

In response to Appellants' argument that the combination of *Crawford* and *Elsbree* is improper, the Examiner again makes the argument that while *Crawford* fails to disclose that software objects are extended from general-purpose software objects to support procurement of the telecommunications offerings on-line and that custom software objects are created to support procuring of the telecommunications offerings on-line, *Elsbree*, in the same field of endeavor, does disclose that software objects are extended from general-purpose software objects to support procurement of the telecommunications offerings on-line and that custom software objects are created to support procuring of the telecommunications offerings on-line. The Examiner refers to "addition properties and method for object" at col. 6, lines 12-39, and col. 18, line 64-col. 19, line 33, and to "user custom data or new class" at col. 19, line 66-col. 20, line 2, and col. 25, lines 26-44. The Examiner reasons that it would have been obvious to combine the references "because the teaching of *Elsbree* on custom data and new class would enable to create one or more real-time interaction control and communication software objects for use in connection with a computer and a machine which communicate according to a standard communication protocol for process control [*Elsbree*, col. 2, lines 8-12]" (Answer-page 14).

The Examiner's rationale is misguided. Nothing in *Crawford* establishes any need or desire for the creation of one or more real-time interaction control and communication software objects, even assuming the Examiner's interpretation of *Elsbree* is correct. More importantly, as Appellants stressed in their principal Brief, since neither reference relates at all to telecommunication services or on-line procurement of telecommunication offerings, not only would the proposed combination not result in the instant claimed subject matter, there would have been no reason to provide for "software objects extended from general-purpose software

objects to support procurement of the telecommunications offerings on-line and custom software objects created to support procuring of the telecommunications offerings on-line" in *Crawford*.

IV. CONCLUSION AND PRAYER FOR RELIEF

The claims require "software objects extended from general-purpose software objects to support procurement of the telecommunications offerings on-line and custom software objects created to support procuring of the telecommunications offerings on-line" but the references are not directed to telecommunication services or on-line procurement of telecommunication offerings. Appellants, therefore, request the Honorable Board to reverse the Examiner's rejection.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

April 30, 2008
Date

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